IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 13391 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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NITINSINH PARBATSINH RAOL - Petitioner(s)
Versus
STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :

MR GUNVANT R THAKAR for Petitioner(s) : 1,
MR DABHI AGP for Respondent(s) : 1 - 3.
RULE SERVED BY DS for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 04/12/2007

ORAL JUDGMENT

1. With the consent of the learned Counsel appearing for both the sides matter is finally

heard today.

2. The short facts of the case appear to be that the petitioner was appointed as the temporary ad-hoc driver on daily wage basis in the year 1998. The petitioner thereafter, was continued further and vide order 31.03.2000, one Mr. H.C. Thakor was posted in place of petitioner as the driver and the services of the petitioner were not continued. The petitioner preferred Special Civil Application No. 2794 of 2000, against the said order and the interim order was granted in the said petition. As a result thereof the petitioner continued on the said post. When the said application came up for final hearing before this Court on 25.07.2005 (Coram:K.S. Jhaveri,J.). Ultimately after hearing both the sides this Court issued following directions:

> “3.0 It may be noted that though the matter was moved in the year 2000, no regular appointment has been made and the petitioner has continued to work on the said Post, pursuant to the order of this Court. Hence, it would be appropriate to continue the petitioner on the said Post till a regular appointment is done on the said Post.

> 4.0 In above view of the matter, the respondent authority is directed not to relieve the petitioner from his duties till a regular appointment is done on the said Post. With the aforesaid direction, the petition stands disposed of. Rule is made absolute to the aforesaid extent with no order as to costs."

3. Therefore, petitioner was to be continued in service till a regular appointment is made on the said post.

4. It appears that thereafter, the petitioner continued up to 2007, and on 14.05.2007 by impugned order Mr. H.C. Thakor, who was posted earlier, is posted vice the petitioner and the petitioner is relieved from service. The said order is under challenge in the present proceedings.

5. Heard Mr. Thakkar learned Counsel for the petitioner and Mr. Dabhi learned AGP for the State authority.

6. The only aspect to be considered is whether the person posted vice the petitioner is the regularly appointed person or not. As per the earlier decision of this Court, the right of the

petitioner to continue in service was right up to the said contingency only.

7. Affidavit in reply has been filed on behalf of the respondent authority by Mr. B.A. Shah, Deputy Collector and in the said affidavit it has been stated at paragraph No. 5 as under:

> “5. I say that the petitioner was appointed as peon cum driver on purely temporary and daily wage basis of Rs. 61.70 ps per day in the office of the Mamalatdar, Mansa, District: Gandhinagar by the order of Collector, Gandhinagar dtd. 12-10-1998. A copy of the said order is annexed hereto and marked ANNEXURE-R-2. I submit that the said order was subject to seven conditions mentioned in the said order. Condition no. (2) clearly laid down that the petitioner's appointment shall be treated as purely temporary and he shall not avail any right for permanent basis appointment on basis of the said appointment. Condition no. (5) clearly laid down that as the said appointment is purely temporary, the petitioner may be terminated at any time without notice and the petitioner shall not raise any objection or claim against the same. Therefore the respondent no. 3 vide order dated 14th May 2007 terminated the services of the petitioner as peon cum

driver from the office of the Mamlatdar, Mansa, District: Gandhinagar and posted one Mr. H.C. Thakor as peon cum driver by transferring him from the Office of the Special Land Acquisition Officer, Gandhinagar (Annexure A of the petition) and by another order dated 14th May 2007 appointed one Mr. J.M. Parmar as driver to the office of the District Supply Officer, Gandhinagar. A copy of the order dated 14th May 2007 appointing Mr. J.M. Parmar as driver to the office of the District Supply Officer, Gandhinagar is annexed hereto and marked ANNEXURE-R-3. But the District Supply Officer, Gandhinagar vide letter dated 16th May 2007 informed the Collector, Gandhinagar that since last one year no vehicle is available to the office of District Supply Officer, Gandhinagar and therefore there is no necessity to appoint a driver to the Office of the District Supply Officer, Gandhinagar. A copy of the letter dated 16th May 2007 is annexed hereto and marked ANNEXURE-R-4. Therefore vide order dated 28th May 2007, the respondent no.3 transferred Mr. J.M. Parmar from the office of the District Supply Officer, Gandhinagar to the Office of Special Land Acquisition Officer, Gandhinagar. A copy of the order dated 28th May 2007 is annexed hereto and marked ANNEXURE-R-5. I say that Mr. H.C.

Thakor joined the office of the Mamlatdar, Mansa, District: Gandhinagar on 16th May 2007. A copy of the document with respect to the same is annexed hereto and marked ANNEXURE-R-6."

8. In view of the above, it is clear that the person who is appointed vice him is regularly appointed driver and therefore, action of the authority of not continuing with the service of the petitioner, which was temporary and as daily wage cannot be said as illegal. The aforesaid is coupled with the circumstance that as stated in para 5, since last one year no vehicle is available to the office of the District Supply Officer, and there is no necessity to appoint the driver in the office of the District Supply Officer, Gandhinagar.

9. Mr. Thakkar learned Counsel for the petitioner by relying upon the statement made in the affidavit in rejoinder, further contended that, there are other vehicles available, and there is also requirement of the driver, and the sanctioned post are also available and therefore, it would be required for the

respondent authority to continue the petitioner on the said post.

10. I am afraid such contention can be accepted. Whether there is availability of the vehicle or requirement of the driver consequently, are for the administration to decide and unless the case is put up of victimization or malafide, this Court would not interfere under Article 226 of the Constitution, in such administrative decision. When the appointing authority has stated that car is not available and therefore, there is no requirement of the driver, this court would not sit in appeal over the said decision of the administration, while exercising power under Article 226 of the Constitution.

11. Mr. Thakkar learned Counsel for the petitioner also submitted that even if the vehicle in the office of the District Supply Officer is not available, the driver who is posted vice him can be posted on the other vehicle, when the posts are available and the vehicle are also available in the other government offices and therefore, he submitted that the petitioner is required to

be continued.

12. I am afraid such contention can be accepted and the reason being that filling up post is also domain of the administration, which is to be decided objectively, keeping in view various consideration including the availability of the fund, other staff etc. When the question of right of the petitioner to continue was already decided in the earlier petition, the petitioner cannot be permitted to re-agitate such question as sought to be canvassed.

13. In the result as the regularly selected candidate is available and the posted vice petitioner the impugned termination order cannot be said in contravention to the earlier decision of this Court in Special Civil Application No. 2794 of 2000 decided on 25.07.2005.

14. Hence, petition is meritless and therefore, dismissed. Rule is discharged. Interim relief if any stands vacated.

(JAYANT PATEL,J.)

Suresh*